IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4530 OF 2005

Shrikrishna Dattaram Shirke. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri B.G.Bagwe for the Applicant.

Ms.M.M.Deshmukh, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 19th July, 2005.

P.C.:

1. Heard Shri Bagwe for the Applicant and the learned A.P.P. for the State. The Applicant has made an application for anticipatory bail before the Sessions Court. His apprehension is that he will be arrested in connection with LAC No.318 of 2005 registered at Kherwadi Police Station under section 53(7) of the Maharashtra Rregional and Town Planning Act, 1966. It is brought to my notice that the learned Sessions Judge passed a detailed order on 11th July 2005 while considering the prayer made by the Advocate for the Applicant for grant of interim protection. Shri Bagwe submitted that the Applicant or his Advocate never stated before the learned Sessions Judge that the Applicant desires to hand over premises in dispute to the builders.

2. A perusal of the order dated 11th July 2005 shows

that the case of the Applicant for grant of interim protection is not considered on merits. If the learned Sessions Judge was of the view that the Applicant has not made out a case for grant of anticipatory bail, the learned Judge ought to have rejected the application immediately to enable the Applicant to move this Court. However, by passing order dated 11th July 2005 the learned Judge has kept the application pending without granting any interim protection.

3. As the Application is pending before the learned Sessions Judge, this Application need not be entertained. However, the Applicant will have to be protected till the application is decided by the learned Sessions Judge. The Applicant will also be entitled to apply for seeking appropriate clarification/ modification of the alleged statement of the Applicant recorded by the learned Sessions Judge in the second last paragraph of the order dated 11th July 2005.

4. Hence the application is disposed of by the following order:

(i) The learned Sessions Judge will decide Application bearing No.976 of 2005 as expeditiously as possible and in any event within a period of one week from today. The application shall be decided on its

own merits in accordance with law.

(ii) Till disposal of the Application by the learned Sessions Judge, the Applicant shall not be arrested in connection with Case bearing LAC No.318 of 2005 of Kherwadi Police Station, subject to condition of complying with the conditions incorporated in clauses (i) to (iii) of sub-section 2 of section 438 of the Code of Criminal Procedure, 1973.

(iii) In case the Application is rejected by the learned Sessions Judge, the interim protection granted by this order will continue to enure to the benefit of the Applicant for a period of three days from the date of rejection of the application by the Sessions Court.

(iv) It will be open for the Applicant to apply before the learned Sessions Judge for seeking necessary clarification/ modification of the order dated 11th July 2005 as regards his statement recorded in the second last paragraph of the said order.

(v) The learned Sessions Judge will decide the Application for anticipatory bail filed by the Applicant on its own merits without being influenced by the grant of limited protection by this Court in favour of the Applicant.

(vi) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.